IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

SA.No. 340 of 2002(F)

OS.494/1996 of I ADDL.SUB COURT,ERNAKULAM
AS.72/1999 of II ADDL.DISTRICT COURT,ERNAKULAM
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APPELLANT: APPELLANT/PLAINTIFF:

K.G.ENGINEERING INDUSTRIES (P) LIMITED,
EDAPPALLY, COCHIN-682 024, REPRESENTED BY ITS
MANAGING DIRECTOR, MR.K.M.UMMER.

BY ADV. SRI.E.R.VENKATESWARAN

RESPONDENTS: RESPONDENTS/DEFENDANTS:
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1. BOARD OF REVENUE (LR) KERALA,
THIRUVANANTHAPURAM, REPRESENTED BY THE SECRETARY.

2. THE DY.COLLECTOR (R.R),
KERALA FINANCIAL CORPORATION, THIRUVANANTHAPURAM.

3. THE DY.TAHSILDAR (R.R),
KERALA FINANCIAL CORPORATION, ERNAKULAM.

4. MR.I.F.SABU,IKKARAPARAMBIL HOUSE,
ST.BENEDICT ROAD,COCHIN-682018.

5. N.K.ABDU, S/O. KASIM,
THODUKARA VEEDU, VENNALA KARA,
EDAPPALLY SOUTH VILLAGE.

6. ZEENATH, W/O. ABDU,
THODUKARA VEEDU, VENNALA KARA,
EDAPPALLY SOUTH VILLAGE.

R2, R3 BY ADV. SRI.T.V.GEORGE, SC, KFC
R4, R5, R6 BY SRI.K.DIVAKARAN NAIR

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

S.A.No.340 OF 2002

Dated this the 25th day of January, 2007

JUDGMENT

1. This appeal is by the plaintiff who sought a declaration that a revenue sale is void.

2. The plaintiff was a debtor of the Kerala Financial Corporation. It is an institution in relation to which, a notification has been issued making the Kerala Revenue Recovery Act applicable. On its requisition, revenue recovery proceedings were initiated. The property in question was notified for sale as per Ext.A1 publication dated 1.10.1991. Thereupon, the plaintiff filed Ext.A2 representation before the Minister for Revenue in the Government of Kerala. While that representation was pending, Ext.A3 sale notice was issued listing the sale on 21.12.1991. That is well within a limit of 60 days from 18.11.1991. On 21.12.1991, the sale was adjourned to 5.2.1992. In the mean while, on 3.2.1992, the Government,

acting on Ext.A2 representation, ordered stay of revenue recovery proceedings on condition that the plaintiff deposits 1/3rd of the outstandings on or before 15.2.1992 and the remaining amount in 10 equal instalments. It is the admitted case that no amount was remitted. Faced with that stay order (Ext.A4) dated 3.2.1992, the sale proceedings which stood listed on 5.2.1992 was adjourned to 17.2.1992. Since the plaintiff did not comply with the conditions imposed by the Government in the order of stay, there was no stay of revenue recovery proceedings as on 17.2.1992. Accordingly, the sale was held and confirmed in favour of the 4th defendant.

3. Plaintiff challenged the sale by moving the first defendant, Board of Revenue, in terms of Section 72 of the Act. That revision was dismissed. Thereafter, the sale was confirmed, which was nothing but a natural consequence of the dismissal of the plaintiff's to set aside the sale. The plaintiff, thereafter, moved this Court by filing a writ petition, which resulted in Ext.B1 judgment of dismissal.

4. Thereafter, the 4th defendant sold the property to defendants 5 and 6.

5. The suit was filed on 26.6.1996 for a declaration that the impugned sale is void. Going by the provisions of the Act, particularly, Section 79 thereof, such a suit would lie only on the ground of 'fraud' in the matter of the sale. The word 'fraud' is nowhere used in the plaint. May be that is unnecessary. But, even if the pleadings in the plaint are read as a whole, the only case that is projected is that the adjournment of sale on 5.2.1992 to 17.2.1992 was an act in violation of Ext.A4 order of stay granted on 3.2.1992 by the Government. For one thing, an order of stay of revenue recovery proceedings does not mean that the revenue sale cannot be adjourned. What is intended by Ext.A4 order of stay is that the property shall not be sold if the conditions imposed in the order of stay are complied with. That apart, when the matter was taken up on 17.2.1992, the order of stay had

worked itself out since the condition to remit 1/3rd of the outstandings on 15.2.1992 had not been complied with. Still further, even the date 17.2.1992 is well within 60 days from 21.12.1991, the date on whch the matter stood posted before 5.2.1992. Even assuming that these would have been grounds worth the name, to interfere with the revenue sale, those are not matters which, by themselves, amount to 'fraud' in the matter of conducting the sale. Any illegality, irregularity or impropriety in the matter of conducting the sale is a matter that can gain attention only of the statutory authority, viz, first defendant Board of Revenue, which has, in the case of the plaintiff, dismissed its contentions.

6. Before the court below, different questions were projected, which gave the foundation for the formulation of substantial questions of law in the memorandum of this second appeal. They include the question as to whether the State of Kerala was a necessary party in the suit; whether the Kerala Financial Corporation was a party to Ext.B1 writ petition and therefore,

whether Ext.B1 judgment will operate as a res judicata to this suit and still further, whether this suit is barred by limitation. The courts below have given different answers to those questions. However, from what is stated above, it can be seen that no such questions were referable in this appeal. Nor had they really arisen in the suit.

This second appeal is without merit. The same is accordingly dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

S.A.NO.340 OF 2002

JUDGMENT

24th JANUARY, 2007.

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